

Claimant was disqualified for failing to show that he engaged in an active work search during the period that he was not attending an approved Section 30 training program. DUA improperly revoked the claimant's approval for Section 30 benefits for non-attendance , seemingly unaware that it had separately approved a later start date.

**Board of Review
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**Issue ID: 0019 9275 37
 0020 5884 96**

BOARD OF REVIEW CORRECTED* DECISION

Introduction and Procedural History of this Appeal

The claimant appeals two decisions by A. Williams, a review examiner of the Department of Unemployment Assistance (DUA), to deny regular and extended unemployment benefits. Because both decisions pertain to the same underlying set of facts, we have consolidated the claimant's appeals. We review, pursuant to our authority under G.L. c. 151A, § 41. As to Issue ID # 0019 9275 37, we reverse. We affirm in part and reverse in part the decision in Issue ID # 0020 5884 96.

The claimant separated from employment and was approved to receive regular unemployment benefits, effective May 29, 2016. He subsequently filed an application for an extension of benefits to attend a training program at John Mason Institute, which was approved for the period November 21, 2016 through April 27, 2017, pursuant to G.L. c. 151A, § 30(c) (Section 30 benefits). The DUA issued this determination on November 9, 2016. Following a claimant request to postpone the start of his training program, the DUA issued a corrected determination on November 26, 2016, approving the claimant for Section 30 benefits for the period January 3, 2017, through June 1, 2017.¹ (Issue ID # 0019 9275 37). However, on December 29, 2016, the DUA disqualified the claimant from receiving both regular and Section 30 benefits for the period beginning November 21, 2016, pursuant to G.L. c. 151A, §§ 24(b) and 30(c). (Issue ID # 0020 5884 96).² The claimant appealed the disqualifications to the DUA hearings department. Following a consolidated hearing on the merits, the review examiner affirmed the agency's

¹ We take administrative notice of the DUA's November 26, 2016 Corrected Notice of Approval in Issue ID # 0019 9275 37, which appears in the DUA's electronic record-keeping system, UI Online.

² See also DUA's Redetermination in Issue ID # 0019 9275 37, included as Exhibit # 9.

determinations and denied benefits beginning November 21, 2016, in separate decisions rendered on February 1, 2017.³ We accepted the claimant's applications for review.

In Issue ID # 0019 9275 37, Section 30 benefits were denied because the review examiner concluded that the claimant failed to begin his approved training program, as required under G.L. c. 151A, § 30(c), and 430 CMR 9.07(1). In Issue ID # 0020 5884 96, the review examiner concluded that the claimant was disqualified from receiving any benefits for the period beginning November 21, 2016, because he failed to engage in an active work search, as required under G.L. c. 151A, § 24(b). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the consolidated hearing, the review examiner's decisions, and the claimant's appeals.

The issue before the Board is whether the two conclusions reached by the review examiner are supported by substantial and credible evidence and free from error of law.

Findings of Fact

The review examiner's findings of fact and credibility assessments in Issue ID # 0019 9275 37 are set forth below in their entirety:

1. The claimant filed a new claim for benefits on 6/1/16 after having been permanently separated from employment. The effective date of the claim is 5/29/16.
2. The claimant was determined to be eligible and began receiving UI benefits.
3. On 9/30/16, the claimant submitted a TOPS Section 30 application for enrollment into the John Mason Institute for Project Management Methodologies, training course # 1102661. The program was to begin on 11/21/16 and be completed by 4/27/17. The claimant would receive certification once he completed course and testing.
4. The Department sent out a notice of approval to the claimant dated 11/9/16.
5. The claimant had received notification from the school that the program would not start on 11/21/16 but would begin instead on 11/28/16.
6. The claimant was experiencing health issues at the time he sent in [a] letter to the Department informing them that due to his health issues, he planned on not starting school until 1/30/17. He informed the Department that he discussed the issue with the school and they were willing to reschedule his start and end dates accordingly.

³ The review examiner issued two decisions on February 1, 2017. In Issue ID # 0019 9275 37, she affirmed the denial of Section 30 benefits. In Issue ID # 0020 5884 96, she affirmed the disqualification from receiving any benefits, pursuant to G.L. c. 151A, § 24(b).

7. The claimant never started the program he had been approved to start in November.
8. The DUA issued the claimant a redetermination denying the claimant's Section 30 application on 12/29/16 because he failed to start the training program on 11/21/16. The claimant appealed the decision.

The review examiner's findings of fact and credibility assessments in Issue ID # 0020 5884 96 are set forth below in their entirety:

1. The claimant filed a new claim for benefits on 6/1/16, having been permanently separated from employment.
2. The claimant was determined to be eligible and began receiving UI benefits.
3. On 9/30/16, the claimant filed a "Training Opportunities Program Application", to attend a certificate program at John Mason Institute. The claimant was to begin this course of study on 11/21/16 and was slated to complete it on 4/27/17.
4. The Department sent out a notice of approval to the claimant dated 11/9/16.
5. The claimant had received notification from the school that the program would not start on 11/21/16 but would begin instead on 11/28/16.
6. The claimant was experiencing health issues at the time he sent in [a] letter to the Department informing them that due to his health issues, he planned on not starting school until 1/30/17. He informed the Department that he discussed the issue with the school and they were willing to reschedule his start and end dates accordingly.
7. Even though the claimant's doctor felt the claimant was capable of working, the claimant did not feel capable of attending the school program because of medical issues he was experiencing with his knee.
8. The claimant never started the program he had been approved to start in November due to his health issues.
9. The claimant did not conduct an active work search. (Exhibit 9) He did not maintain information regarding the employer, address of employer, person contacted, pay rate, or the results of each of his searches.
10. On [12/29/16], the claimant was issued a determination denying him approval under Section 30 due to a change in his enrollment status as of 11/21/16, since the claimant did not start the program as approved. He was denied unemployment benefits under Section 24(b) of the Law for the week-beginning 11/20/16 through 4/27/17.

Ruling of the Board

In accordance with our statutory obligation, we review the decisions made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusions are free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, we conclude that the claimant was not entitled to a waiver of the work search requirement during the period that he was not attending an approved training program. We further conclude that the DUA improperly rescinded the claimant's eligibility for Section 30 benefits, beginning January 3, 2017, and that he is entitled to be approved for the next available appropriate training program, which commences within his benefit year.

In Issue ID # 0020 5884 96, the review examiner disqualified the claimant, pursuant to G.L. c. 151A, § 24, which provides, in pertinent part, as follows:

[An individual, in order to be eligible for benefits under this chapter, shall] . . . (b) Be capable of, available, and actively seeking work in his usual occupation or any other occupation for which he is reasonably fitted; and (c) . . .

An individual who is certified as attending an industrial training course or other vocational training course as provided under section thirty shall be deemed to be available for work under clause (b) of the first paragraph of this section.

In Issue ID # 0019 9275 37, the review examiner disqualified the claimant, pursuant to G.L. c. 151A, § 30(c), which relieves claimants who are enrolled in approved training programs of the obligation to search for work, and which permits extensions of up to 26 weeks of additional benefits. The procedures and guidelines for implementation of training benefits are set forth in 430 CMR 9.00–9.09.

Issue ID # 0019 9275 37

We first consider whether the claimant is entitled to Section 30 benefits. In rendering its initial Notice of Approval on November 9, 2016, and its Corrected Notice of Approval on November 26, 2016, the DUA determined that this training program met the requirements for approval under G.L. c. 151A, § 30(c), and 430 CMR 9.05. In its Redetermination Notice of Disqualification, dated December 29, 2016, the DUA revoked that approval, because the claimant had failed to start the training program on November 21, 2016.⁴ This Redetermination ignores the fact that, on November 26, 2016, the DUA had granted the claimant permission to postpone his enrollment until January 3, 2017. In rendering her decision, the review examiner also appears to have been unaware of the interim Corrected Notice of Approval, dated November 26, 2016. Because the DUA had approved the later (January 3) start date, it was error to disqualify him for failing to start the training program on November 21, 2016.

⁴ See Exhibit # 9 under Issue ID # 0019 9275 37.

Had the claimant begun attending his Project Management Methodologies training program on January 3, 2017, our decision today would have rendered him eligible for Section 30 benefits retroactively to that date. However, he did not. Since this training program otherwise meets the DUA's requirements for Section 30 approval, we conclude that the claimant is entitled to Section 30 benefits if he enrolls in the next available Project Management Methodologies training program that commences before the expiration of his benefit year.⁵

Issue ID # 0020 5884 96

We next consider whether the claimant was required to actively seek work, beginning November 21, 2016, as concluded by the review examiner. The DUA's November 9, 2016, Notice of Approval for Section 30 benefits provided that the claimant's work search requirements were waived while attending the approved November 21, 2016, to April 27, 2016, training program.⁶ The DUA's authority for waiving the work search requirement comes from G.L. c. 151A, § 24(c). Since he did not attend training beginning November 21, 2016,⁷ he was obligated, under G.L. c. 151A, § 24(b), to continue to actively search for work until the date that he began his training program. The DUA's November 26, 2016 Corrected Notice of Approval contained the same terms. He would be granted a waiver of the work search requirements while attending the training program that was to begin on January 3, 2017. Because the claimant did not attend training beginning January 3, 2017, the same statutory provision obligated him to continue to engage in an active work search in order to continue to receive regular unemployment benefits. [*Footnote removed.]

[*Added:] Based upon the claimant's failure to report the names of the employers contacted, their addresses, the individuals contacted, or the results of the job search effort in his work search log, the review examiner concluded that the claimant failed to demonstrate that he had engaged in an active work search. *See* DUA Service Representative Handbook, § 1015(C). We agree.

We, therefore, conclude as a matter of law that the claimant is ineligible for regular benefits, pursuant to G.L. c. 151A, § 24(b), from November 21, 2016 through the week ending January 28, 2017.⁸ We further conclude as a matter of law that the claimant is entitled to Section 30 benefits if he begins attending the Project Management Methodologies training course at John Mason Institute on the next available enrollment date prior to the expiration of his benefit year.

⁵ The claimant's benefit year expires on May 27, 2017. He must also be sure to certify for benefits in each week that he is in training.

⁶ *See* Exhibit # 3 under Issue ID # 0019 9275 37.

⁷ Nor did the claimant begin on November 28, 2016, the school's revised start date.

⁸ According to UI Online, the claimant stopped certifying after the week ending January 28, 2017, because he had exhausted his regular unemployment benefits.

The review examiner's decision in Issue ID # 0019 9275 37, which disqualified the claimant, pursuant to G.L. c. 151A, § 30(c), is reversed. The review examiner's decision in Issue ID # 0020 5884 96, which disqualified the claimant, pursuant to G.L. c. 151A, § 24(b), is affirmed, but only for the period November 21, 2016, through January 28, 2017. The claimant is entitled to receive Section 30 benefits while he attends the next available Project Management Methodologies training program at John Mason Institute prior to the expiration of his benefit year, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - * March 17, 2017



Paul T. Fitzgerald, Esq.
Chairman



Judith M. Neumann, Esq.
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT
COURT OR TO THE BOSTON MUNICIPAL COURT
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:
www.mass.gov/courts/court-info/courthouses

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

AB/rh